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BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Broadband PCS C and F Block) WT Docket No. 97-82
Installment Payment Issues) DA 97-679
)

**COMMENTS OF
COMMUNITY SERVICE COMMUNICATIONS, INC.**

Community Service Communications, Inc. ("CSCI") hereby files its comments in response to the *Public Notice* of June 2, 1997, requesting comment on broadband Personal Communications Service ("PCS") C and F Block installment payment issues.¹ For the reasons stated herein, CSCI urges the Commission to hold firm and enforce the original rules, terms and conditions governing C and F Block licensees' installment payments.²

I. INTRODUCTION/SUMMARY

CSCI, a Maine corporation located in Winthrop, Maine, is the holding company for Community Service Telephone Company, a local exchange telephone company operating several small exchanges in rural Maine, and its affiliated service organizations. CSCI was an unsuccessful bidder in the C Block broadband PCS auction, and elected not to participate in the F Block auction.

CSCI was unsuccessful in the C Block auction largely because it behaved responsibly: it was unwilling to bid more than it was prepared to finance; and the Commission

¹ Wireless Telecommunications Bureau Seeks Comment on Broadband PCS C and F Block Installment Payment Issues, *Public Notice*, WT Docket No. 97-82, DA 97-679 (rel. June 2, 1997) ("*Public Notice*").

² Indeed, CSCI questions whether the Commission can change its installment payment rules without a formal Notice of Proposed Rule Making.

had not acted upon its waiver request for small business status. Under a strict reading of the rules, CSCI was not eligible for small business status although CSCI had substantial grounds for waiver of the relevant eligibility rule and filed an appropriate request with the Commission.³

The Commission failed to resolve the questions prior to the start of the auctions. Nevertheless, CSCI participated in the C Block auction but withdrew when the auction values, in its opinion, became excessively high and exceeded amounts which CSCI was prepared to finance without a valid waiver. In short, at all times, CSCI acted responsibly and in compliance with the Commission's rules.

It is now apparent that certain C Block licensees have had difficulty attracting the capital necessary to pay for their licenses and construct their systems and, as a consequence, are delinquent or in default on their installment payments. Rather than enforcing the default remedy provided in the rules (cancellation and reauction of the license), however, the Commission has taken the unprecedented step of suspending the installment payments for PCS C and F Block licenses.⁴ The Commission also issued the *Public Notice* soliciting comment and proposals

³ Although CSCI is, in every sense of the word, a publicly traded small business with widely distributed ownership, CSCI's eligibility for the C and F Block auctions (and for small business status) was jeopardized because one of CSCI's shareholders holds legal right to more than 15% of its common stock. Therefore, CSCI requested that the Commission's Wireless Telecommunications Bureau waive the provisions of Section 24.720(m)(2)(i) so that CSCI and its wholly-owned subsidiaries may qualify for the benefits afforded to a widely held, publicly traded corporation, in the C and F Block PCS auctions by letters dated October 20, 1995 and July 3, 1996 respectively. *See* Letter from Lawrence J. Movshin, *Wilkinson, Barker, Knauer & Quinn*, to Kathleen O'Brien Ham, *Chief, Auction Division, Wireless Telecommunications Bureau*, October 20, 1995; Letter from Lawrence J. Movshin, *Wilkinson, Barker, Knauer & Quinn*, to Kathleen O'Brien Ham, *Chief, Auction Division, Wireless Telecommunications Bureau*, July 3, 1996. The Commission provided no formal or informal response to either letter.

⁴ *See* Installment Payments for PCS Licenses, *Order*, DA 97-649 (rel. March 31, 1997); FCC Announces Grant of Broadband Personal Communications Services D, E, and F
(continued...)

regarding C and F Block installment payment issues. In particular, the *Public Notice* seeks comment on a number of specific requests for alternative financing arrangements filed by certain broadband PCS C and F block licensees.⁵

CSCI finds the proposals to restructure the C and F Block plans to be baffling. The proposals directly conflict with the Commission's rules and precedent and would be grossly unfair to other auction winners *and* unsuccessful auction bidders — who played by the rules. All potential bidders were on notice of their obligation to assess their qualifications and financial capabilities *before* the auction and based strategic business decisions upon that assessment. For the Commission to go back and change the basis of those business decisions, simply to accommodate those entities whose judgment proved to be erroneous, would be patently unfair and, in CSCI's judgment, unlawful.

CSCI therefore urges the Commission to enforce strictly the existing rules, terms and conditions governing C and F Block licensees' financial arrangements. In particular, the Commission should not: (1) reduce the principal amount due to the federal government under current C block installment plans; (2) lengthen the term of repayment beyond the current 10-year period; or (3) modify the ownership and attribution and control group rules. Instead, the Commission should reactuate any defaulted licenses. If any restructuring to the installment payment rules is deemed necessary, the Commission may institute a rule making prior to the new auction.

⁴ (...continued)
Block Licenses, *Public Notice*, DA 97-883, at 2 (rel. April 28, 1997).

⁵ See *Public Notice* at 1-2.

II. THE COMMISSION SHOULD NOT ALTER THE FUNDAMENTAL TERMS AND CONDITIONS OF C AND F BLOCK INSTALLMENT PAYMENTS

The plight of the C Block licensees struggling to secure financing to meet their payment obligations and build-out requirements may be lamentable. CSCI has no doubt that many of the struggling C Block licensees made good faith efforts to obtain access to the necessary capital. Nevertheless, CSCI does not believe that the plight of these licensees justifies the Commission retroactively altering the financial terms and conditions pursuant to which these entities obtained their licenses.

A. The Proposals for Restructuring C and F Block Installment Payments Directly Contravene Commission Rules and Precedent.

Every bidder in the Commission's broadband PCS auctions was on notice that failure to meet its payment obligations — be it a down payment, lump sum payment, or installment payment — would result in loss of its license(s). The installment payment rules provide that a “license granted to an eligible entity that elects installment payments *shall be conditioned upon the full and timely performance of the licensee's payment obligations* under the installment payment plan.”⁶ The rules also provide for automatic cancellation and reauctioning of licenses should a licensee fail to perform its payment obligations.⁷

⁶ 47 C.F.R. § 1.2110(e)(4) (1996) (emphasis supplied).

⁷ *Id.* at (iii). See also Implementation of Section 309(j) of the Communications Act - Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, 2391 (1994) (“*Second Report and Order*”)(stating “An eligible designated entity that elects installment payments will have its license conditioned upon the full and timely performance of its payment obligations under the installment plan granted to the licensee.”); *Fifth Report and Order*, 9 FCC Rcd 5532, 5593 (1994) (stating “timely payment of all installments will be a condition of the license grant and failure to make such timely payment will be grounds for revocation of the license”).

The Commission has made clear that its payment rules were to be strictly enforced. Strict enforcement of the rules was necessary, the Commission determined, to weed out all but the most serious bidders *prior to auction*, thereby increasing the likelihood that licenses would be awarded to the entities most capable of deploying service and that the auction would not unnecessarily be prolonged. Further, *after auction*, licensees unable to make payments and deploy service in compliance with those rules would have their licenses revoked and reaucted to a licensee better able to deploy service and make payments.

For example, in the *Second Report and Order*, the Commission stated:

it is critically important to the success of our system of competitive bidding that potential bidders understand that there will be a substantial penalty assessed if they withdraw a high bid, are found not to be qualified to hold licenses or default on a balance due. We therefore are adopting penalties to be assessed in the event of default or disqualification. These penalties will provide strong incentives for potential bidders to make certain of their qualifications and financial capabilities before the auction so as to avoid delays in the deployment of new services to the public that would result from litigation, disqualification and re-auction.⁸

The Commission also recognized that discouraging speculation by entities lacking adequate financial resources serves the important Congressional policies expressed in Section 309(j) of the Communications Act of 1934, including promoting rapid service deployment.

We believe that these penalties will adequately discourage default and ensure that bidders have adequate financing and that they meet all eligibility and qualification requirements. . . . [W]e further believe this approach is well within our authority under both Section 309(j)(4)(B) and Section 4(i) of the Communications Act, 47 U.S.C. § 154(i), as it is clearly necessary to carry out the rapid deployment of new technologies through the use of auctions.⁹

⁸ *Second Report and Order*, 9 FCC Rcd at 2382 (emphasis supplied).

⁹ *Fifth Report and Order*, 9 FCC Rcd at 5564.

In amending its F Block auction rules, the Commission shortened the interest-only payment period to two years in the most favorable installment plan in order to prevent speculation.

We also believe that a two-year interest-only period (and other measures adopted herein) will deter speculation and insincere bidding. If licensees need to pay only a small percentage of their winning bid (10 percent for the C block and 20 percent for the F block) through year six of the license term, they will have a greater incentive to place speculative bids because the actual cost of the license is not recognized until late in the license term. We believe that shortening the interest-only period to two years will be likely to encourage bidding, business, and financial strategies based upon market forces rather than the financial terms of installment payment plans.¹⁰

Given the importance of timely payment, the Commission has consistently and strictly enforced licensees' post-auction payment obligations.¹¹ Indeed, in a recent order denying an emergency petition for waiver of the portions of Commission Rule 24.711 governing C Block upfront payments and down payments the Commission stated:

[T]he 'upfront and down payment provisions in Section 24.711 of the Commission's rules are designed to ensure that the ultimate purpose of the auction - encouraging and facilitating the provision of reliable service to the public - is not undermined by winning bidders who lack the financial capability to pay for the license. . . .' Timely payments are a necessary indicator to the Commission that the winning bidder is financially able to

¹⁰ Amendment of Parts 20 and 24 of the Commission's Rules — Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, 11 FCC Rcd 7824, 7846 (1996).

¹¹ See *Carolina PCS I Limited Partnership, Order*, DA 97-890 ¶ 8 (WTB rel. April 28, 1997) (stating "We are not insensitive to [licensee's] dilemma. However to ensure that small businesses have opportunities to participate in the provision of spectrum based services, and that such services are rapidly deployed, we must require that winning bidders are able to meet their payment obligations in a timely manner"); see also, *Emergency Petition for Waiver of Deadline for Submission of Down Payment for the Broadband PCS C Block Auction filed by BDPCS, Inc., Order*, DA 96-811 (WTB rel. May 20, 1996); *Interactive Video and Data Service Licenses Requests to Extend Payment Deadline, Order*, 10 FCC Rcd 4520 (1995).

meet its obligations on the license and intends to use it for the provision of service to the public. The failure to secure financing does not serve as a justification for a waiver.¹²

In sum, the Commission recognized from the outset of the auction process that “encouraging under-capitalized firms to receive licenses for facilities which they clearly lack the resources adequately to finance” would jeopardize service deployment.¹³ To that end, the Commission structured its payment rules to require eligible entities utilizing the installment payment plan to make interest-only installment payments for the early years of the license, and to amortize the principal over the remaining term.¹⁴ Where a licensee is unable to make payments, the Commission established a grace period to bring that licensee back from the brink.¹⁵ However, should the grace period be insufficient, the Commission did not contemplate additional heroic efforts on behalf of the struggling licensee. Instead, the Commission determined that a quick reauction of the defaulted license was the best remedy to promote rapid service deployment.¹⁶

The proposals presented in the *Public Notice*, however, would undo this simple and effective process by enabling entities which obtained PCS licenses but lack the resources to finance adequately the purchase of their licenses and development of their systems to retain their licenses and continue searching for financial backing. Of particular concern are the proposals to

¹² Mountain Solutions, LTD, Inc., *Order*, DA 97-891 ¶ 6 (WTB rel. April 28, 1997) *quoting* BDPCS, Inc., *Memorandum Opinion and Order*, FCC 96-498 (rel. Jan. 6, 1997).

¹³ *Second Report and Order*, 9 FCC Rcd. at 2390.

¹⁴ *Id.* at 2391.

¹⁵ 47 C.F.R. § 1.2110(e)(4)(ii), (iii) (1996).

¹⁶ *See id.* at §1.2110(e)(4); § 1.2109(c).

reduce the principal amount due to the federal government under current C block installment plans, lengthen the term of repayment beyond the current 10-year period, and modify the ownership and attribution and control group rules. There is *no* evidence that any of these proposals will facilitate rapid service deployment better than the quick reacquisition of the licenses required by the Commission's rules.

Furthermore, reducing the principal amount or deferring interest payments may well result in the loss of hundreds of millions of dollars to the Treasury. In addition, such action would reward precisely the kind of speculation and irresponsible bidding that the Commission sought to prevent through its installment payment rules. Changing the installment payment rules retroactively is almost certainly likely to encourage speculation in future auctions by creating an expectation that the Commission will not strictly enforce whatever payment deadlines and other requirements it may establish in the future. Moreover, extending the repayment term beyond the initial ten-year license term severs the nexus between the asset acquired at auction and the payment obligations for that asset.

Therefore, CSCI submits that the Commission should not, at this late date, alter the terms and conditions of C and F Block installment payments. To do so would directly conflict with the important legislative and regulatory policies served by the existing installment payment rules and would provide little or no corresponding benefit to the public interest.

B. Restructuring C and F Block Installment Payments at This Late Date Would be Unfair to Other Successful and Unsuccessful Auction Bidders.

In addition to the above, retroactively altering the terms and conditions of C and F Block installment payments would be patently unfair to the dozens of other winning who do not require restructuring of their installment payments, as well as unsuccessful bidders such as CSCI

who might have acquired licenses if other bidders had not acted recklessly. As discussed above, every potential bidder in the PCS auctions was on notice of its obligation “to make certain of their qualifications and financial capabilities before the auction.”¹⁷ Further, the Commission’s installment payment rules expressly state that payment deadlines would be enforced and the Commission provided frequent warnings that default or late payments would result in loss of license.

To that end, there were dozens of winning bidders in the Commission’s PCS auctions — including C Block licensees — who heeded the Commission’s warnings, made certain that they complied with the ownership and attribution and control group rules, and complied with their payment obligations. In addition, there were numerous unsuccessful bidders who, like CSCI, responsibly assessed their qualifications and financial capabilities *before* the auction and who abstained from participating in or withdrew from the auctions rather than proceeding on questionable eligibility or making irresponsible bids for which they had no financing. These entities played by the rules and for the Commission to alter these rules at this late date to accommodate those entities that cannot (or will not) play by these same rules is grossly unfair.

CSCI submits, therefore, that to the extent the Commission believes it is necessary to modify its installment payment rules, it should do so on a prospective basis only. In other words, when the Commission reaucts the defaulted PCS licenses, it is free to restructure the installment payments as necessary to: (1) promote competition among a diverse group of service providers (including small businesses and entrepreneurs); (2) award licenses to parties that will

¹⁷ *Second Report and Order*, 9 FCC Rcd at 2382.

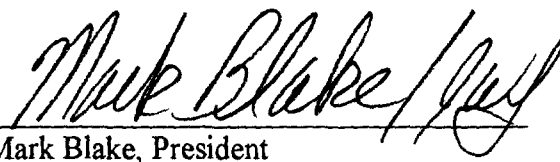
provide service and use spectrum efficiently; and (3) award licenses expeditiously.¹⁸ The Commission is not free, however, to retroactively modify the installment payment rules in order to accommodate those entities who failed to heed the Commission's warnings and did *not* make certain of their qualifications and financial capabilities *before* the auction — especially when the Commission failed to address CSCI's waiver request.

III. CONCLUSION

For the foregoing reasons, CSCI respectfully requests that the Commission strictly enforce the original terms and conditions governing C and F block licensees' financial arrangements. In that regard, the Commission should not: (1) reduce the principal amount due to the federal government under current C block installment plans; (2) lengthen the term of repayment beyond the current 10-year period; or (3) modify the ownership and attribution and control group rules.

Respectfully submitted,

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¹⁸ Cf. *id.* at 2349.

CERTIFICATE OF SERVICE

I, Shelia L. Smith, hereby certify that copies of the foregoing "Comments of Community Service Communications, Inc." in WT Docket No. 97-82, in response to *Public Notice* DA 97-679, were served via first class U.S. mail, postage prepaid, this 23rd day of June, 1997, to the persons listed below:

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